

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEVADA

3 CUNG LE, NATHAN QUARRY, JON)
4 FITCH, BRANDON VERA, LUIS)
5 JAVIER VAZQUEZ, and KYLE)
6 KINGSBURY, on behalf of)
7 themselves and all others)
8 similarly situated,)

9 Plaintiffs,)

10 vs.)

11 ZUFFA, LLC, d/b/a Ultimate)
12 Fighting Championship and)
13 UFC,)

14 Defendant.)

Case No. 2:15-cv-01045-RFB-PAL

Las Vegas, Nevada

July 13, 2017

1:45 p.m.

Status Conference

15 TRANSCRIPT OF PROCEEDINGS

16 BEFORE THE HONORABLE PEGGY A. LEEN

17 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

18 APPEARANCES:

19 For the Plaintiff:

20 JOSEPH R. SAVERI, ESQ.
21 Joseph Saveri Law Firm, Inc.
22 555 Montgomery Street, Suite 1210
23 San Francisco, CA 94111

24 ERIC L. CRAMER, ESQ.
25 Berger & Montague, P.C.
1622 Locust Street
Philadelphia, PA 19103

Appearances continued on Page 2.

Recorded by: Jeff Miller

Transcribed by: Katherine Eismann, CSR, CRR, RDR
(702)431-1919 ke@nvd.uscourts.gov

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1 APPEARANCES CONTINUED:

2 For the Defendant:

3 STACEY K. GRIGSBY, ESQ.
4 Boies, Schiller & Flexner LLP
1401 New York Avenue, NW
Washington, DC 20005

5 MARCY N. LYNCH, ESQ.
6 Boies, Schiller & Flexner LLP
121 S. Orange Avenue, Suite 840
7 Orlando, FL 32801

8 BRENT K. NAKAMURA, ESQ.
9 Boies, Schiller & Flexner LLP
1999 Harrison Street, Suite 900
Oakland, CA 94612

10 J. COLBY WILLIAMS, ESQ.
11 Campbell & Williams
700 South 7th Street
12 Las Vegas, NV 89101

1 (Thursday, July 13, 2017, 1:45 p.m.)

2 --oOo--

3 P R O C E E D I N G S

4 COURTROOM ADMINISTRATOR: All rise.

5 THE COURT: Good afternoon. Please be seated.

6 COURTROOM ADMINISTRATOR: Your Honor, we are now
7 calling Le versus Zuffa, LLC. The case number is
8 2:15-cv-1045-RFB-PAL.

9 Beginning with plaintiffs' counsel, counsel, please
10 state your names for the record.

11 MR. SAVERI: Good afternoon, Your Honor. Joseph
12 Severi on behalf the plaintiffs.

13 MR. CRAMER: Good afternoon, Your Honor. Eric Cramer
14 for the plaintiff.

15 MS. GRIGSBY: Stacey Grigsby on behalf of Zuffa, LLC.

16 MR. WILLIAMS: Colby Williams on behalf of Zuffa,
17 LLC.

18 MS. LYNCH: Marcy Lynch on behalf of Zuffa, LLC.

19 MR. NAKAMURA: Brent Nakamura on behalf of Zuffa,
20 LLC.

21 THE COURT: This is the time set for the status
22 conference in this case. I've received the parties' letter,
23 Docket No. 450, with its attachments requesting a dispute
24 resolution concerning plaintiffs' 30(b)(6) deposition notice.
25 That is an amended deposition notice with respect to a Zuffa

1 custodian of records request. And the parties have also filed
2 a joint status report, Docket No. 454, which I have.

3 In the interim, the plaintiffs have filed an
4 emergency motion to compel production of withheld privileged
5 documents, which plaintiffs request be heard today; and defense
6 counsel indicates a responsive brief will be filed tomorrow in
7 accordance with the order briefing schedule.

8 So, let me start off by treating the parties' dispute
9 with respect to the 30(b)(6) deposition notices, Zuffa's motion
10 to modify and narrow. That seems to be what the parties'
11 disputes involve.

12 And let me hear from counsel for Zuffa. Who will be
13 articulating your position.

14 Miss Grigsby?

15 MS. GRIGSBY: Thank you, Your Honor. Just to give
16 you some background on this dispute, Zuffa has been forthcoming
17 and responsive to many, many questions in terms of how it has
18 collected, preserved, and produced electronically stored
19 information.

20 We have engaged in multiple meet and confer
21 conferences on these topics. Even within the context of this
22 particular deposition, we've engaged in at least four separate
23 meet and confer conferences.

24 We've indicated that we are willing to go forward as
25 of May on various topics including 1, 3, 4, 5, 6, 8, 9, 10, 11,

12, 14, 18, 20, 22, 23, and 25.

Through the various meet and confer conferences, we have reach agreement on topics 1 through 12 and other topics so that there's only eight that remain.

But, the question still remains. Given the amount of information that we've given to the plaintiffs, the fact that separately we filed a declaration that pretty much goes through what our preservation and collection of the ESI entailed, which is Docket No. E-409 when we had the declaration on the steps we took after the litigation hold, it is somewhat unclear with these remaining topics what plaintiffs need.

And we object to the topics, because we believe that they are overbroad and unduly burdensome and unlikely to lead to any discoverable evidence. Plaintiffs have continued to push for answers on these eight topics. But one thing that we think is that A, these topics aren't relevant to this litigation at this stage of the proceeding.

So, for example, Topics 13, 15, 17, 19 and 21 seek information regarding custodians and other employees' personal and business devices, email communication accounts, social media accounts, and other accounts over a 12-year period.

Initially, the period was longer and plaintiffs have taken the position that they are willing to shorten it to 12 years.

For topics 27 through 29, they seek every --

1 information on every document, every piece of data and every
2 text messages that may have been deleted, from January 2014 to
3 the present, whether it was maintained by custodian in this
4 case and regardless of whether it's responsive to a discovery
5 request or whether Zuffa had an obligation to preserve that
6 particular data.

7 They are designed to reopen discovery in this case.
8 Through the course of the meet and confers, we've asked the
9 plaintiffs what they need this information for, especially
10 because when you look at Topics 1 through 12, it covers what
11 steps Zuffa took in anticipation of the litigation and after
12 litigation was filed to identify, preserve, collect
13 information.

14 So, in this case, these remaining topics already
15 disputed are just overbroad, and it's not clear why plaintiffs
16 need it and how it's even relevant to any claim or defense in
17 this case.

18 And the other thing that we think shows that
19 plaintiffs have not necessarily identified a need is that as we
20 pointed out, plaintiffs have the opportunity to ask the
21 individual custodians or any witness about the ESI they
22 maintained during the relevant period that might be important
23 to their claim.

24 So, the answers they want from the custodian of
25 records on what, for example, Denitza Batchvarova did with her

1 personal email accounts, they have actually not asked that
2 question. They -- they deposed Denitza Batchvarova in January
3 of 2017. And despite questioning her for a full day, they did
4 not ask any questions on social media or other personal
5 accounts.

6 The same holds true for Michael Pine, who is also a
7 former Zuffa employee who was deposed. There was no question
8 at all on any of these topics that obviously the witnesses
9 would probably be in the best position to answer.

10 And, in fact, for one witness that they cite in their
11 filing, Joe Silva, where they say that there is actually a
12 question as to his ESI preservation and his text message
13 preservation, plaintiffs cite a question in his recent
14 deposition, which took place on June 7, 2017, that was asking
15 why he didn't have any text messages before January 30th, 2015.

16 Well, in fact, plaintiffs have, and I have in front
17 of me, text message productions from 2014 and 2015 from
18 Mr. Silva. So, again, it's unclear why plaintiffs have chosen
19 to pursue this through a custodian of records deposition.

20 THE COURT: Let me stop you there, because if I
21 understand the plaintiffs' papers correctly, they say, and they
22 ask the question during this deposition, excerpts are attached
23 to the papers indicating that; do you have any explanation for
24 why you don't have text messages for a discrete period of time,
25 and he said "I have no idea."

1 And you are telling me that -- and what they, the
2 plaintiffs, were telling me is that the reason they know he had
3 text messages is because they had text messages from other
4 custodians in which there were exchanges.

5 You are now telling me that they are just wrong?
6 That there were text messages that were produced from
7 Mr. Silva?

8 MS. GRIGSBY: Correct, Your Honor. And, in fact,
9 I -- I can hand it up. And I am just going to hand it to the
10 plaintiffs. These have already been produced in July of 2016
11 in this case. I think there was just a misunderstanding.

12 And, in fact, we have another example where plaintiff
13 sent an email referencing -- it's highlighted; so, obviously,
14 the highlighting was not in the original email. Here.

15 MR. SAVERI: Thank you.

16 MS. GRIGSBY: Where plaintiffs sent an email asking a
17 question about Mr. Silva's emails prior to January 30th, 2015,
18 because they, in fact, had it.

19 So, in the highlighted portion, they cite a text
20 message received by Joe Silva at January 13th, 2015, at
21 7:24 p.m., with a blank from field.

22 So, this is part of what you heard in the last status
23 conference, which was that the parties were going back and
24 forth about issues with the text message production. But on
25 that particular point, plaintiffs are just -- it's just

1 incorrect that Zuffa did not produce any text messages from
2 Mr. Silva prior to January 30th, 2015.

3 So, again, you know, in these -- in these individual
4 depositions, they, until recently, haven't really pursued what
5 these custodians and other witnesses have done with their
6 personal accounts and their information or their text messages.
7 And here where they are representing to you that there's an
8 issue, in fact, in this particular case, there is not.

9 So, just kind of becoming more focused on why we
10 think it's burdensome. So, turning to Topic 13, Topic 13 just
11 generally asks for identification, use, storage, location,
12 preservation, backup condition, and status of all personal or
13 individual non-company electronic devices, including without
14 limitation all desktop computers, PDAs, portable, laptop and
15 notebook computers, cell phones, et cetera, used by your
16 employees for business purposes.

17 And I think it is clear from our papers, our first
18 objection was that they define the time period again 16 years.
19 We're talking about personal devices. So, it would be almost
20 impossible for us to locate all of the personal devices of all
21 the employees, even former employees who may or may not have
22 worked for Zuffa over that time period.

23 Plaintiffs have narrowed, in fairness, their
24 proposal, so that they want information for the 22
25 Court-ordered and agreed custodians, Denitza Batchvarova, whom

1 they've deposed, Shane Karpal, Scott Coker and Scott Adams.

2 We have advised plaintiffs that we could give them
3 information based on our collection and the interviews that we
4 did when the litigation was filed. And at that time, we
5 specifically asked -- and as we've told plaintiffs during the
6 meet and confer conference, we have asked employees, during our
7 collection interviews, what personal email accounts they may
8 have used for business purposes.

9 But it is not possible for us to find out whether one
10 of the Court-ordered and agreed custodians had a Myspace
11 account from 2004 that no longer existed. That would be a
12 Herculean task.

13 And that is our basic objection, and our language is
14 trying to -- is trying to narrow the topics such that we can
15 give plaintiffs information that we can actually have and
16 collect reasonably, without trying to hide anything from them.

17 In addition, there's another issue, which is that we
18 don't have the personal information, devices of former
19 employees. So, for example, Scott Coker, he once worked for
20 Strikeforce. That was acquired by Zuffa, but this was prior to
21 this litigation. He has since moved on and now he works for
22 Bellator. It's going to be extraordinarily burdensome and
23 basically impossible for to us collect that information from
24 Scott Coker.

25 We've made a reasonable investigation about personal

1 emails and electronic devices. We've actually asked that
2 question in our custodial interviews. So, it's just unclear to
3 us what plaintiffs actually expect to get out of that topic in
4 a 30(b)(6) deposition.

5 So, for Topic 15, we just have a similar-type issue.
6 Initially as written, it was a 16-year period. Here it is
7 limited to the agreed and ordered custodians. But again, it's
8 any electronic device at all that was ever used.

9 We've already collected information about the devices
10 and accountants that were in existence, the laptops that were
11 in existence at the time the litigation was filed. So, to go
12 back and reinterview them would be extraordinarily difficult.

13 And again, that goes back to the earlier point, which
14 is if it didn't exist at the time litigation was filed and when
15 the litigation hold was put in place, I'm not sure what
16 plaintiffs expect Zuffa to do with that information.

17 You know, at that point, if there was a computer from
18 2005 that is no longer existed as of January or -- January 2015
19 or December 2014, there are no practical steps we can take to
20 get that computer back. So, that's the nature of our objection
21 with that.

22 For Topic 17, which seeks all social media accounts,
23 we really, part of the issue is, goes back to the definition of
24 a business purpose. As we've negotiated with plaintiffs, we
25 understand that they want everything that is relevant to the

1 litigation. But it's our view there are -- there maybe many
2 mentions on a social media account (indiscernible) because
3 that's their job, but yet are not really for a business
4 purpose.

5 So, one example we have is for Court-ordered and
6 agreed custodian Donna Marcolini.

7 MR. SAVERI: I'm sorry. I don't know what you're
8 looking at.

9 MS. GRIGSBY: (Indiscernible), in a minute.

10 THE COURT: The record will reflect counsel has
11 provided opposing counsel with the two pages of materials that
12 have been handed to the Court.

13 MS. GRIGSBY: So, for example, Miss Marcolini is on
14 social media. Here it looks like a Twitter account where she
15 says, "Checking in for first athlete," because, you know, she's
16 in a different location. And she also Tweets the same thing.
17 "Fight week. Gabriel Angle check in her first athlete Marsan
18 Tuvera."

19 So, this obviously talks about the UFC. Donna
20 Marcolini is doing it. It is related somehow to fights that
21 take place in the UFC, but we would not define that as a
22 business purpose, and it would be incredibly burdensome for us
23 to identify every single instance where something like this
24 actually occurs.

25 So, just to make the objection concrete, for 19, just

1 kind of going through the line, again, we have an issue,
2 business purpose. They seek the identification, use
3 preservation, backup, status of all personal individual
4 accounts, non-company, used by custodians for any business
5 purpose.

6 If we can agree on what business purposes is, which
7 we submit is furtherance of a business objective, like, you
8 know, as opposed to just some kind of incidental mention of the
9 UFC, then it's going to be incredibly difficult for us to
10 educate or to find or interview even the Court-ordered and
11 agreed custodians about this information.

12 So, for Topic 21, just to kind of move through, we
13 have a similar objection here.

14 THE COURT: That, however -- and I'm having a hard
15 time applying your proposed definition of a business purpose to
16 Topic number 21.

17 MS. GRIGSBY: Sure.

18 THE COURT: When the topic calls for information
19 about business-related email accounts and instant messages
20 accounts, and you propose to limit it to regularly used for
21 business limitation, as you define it in your proposal, how --
22 and your proposal is to define the term business purposes
23 meaning the regular use of a social media or other non-Zuffa
24 account or service by an employee to carry out his or her
25 official job duties.

1 MS. GRIGSBY: Right.

2 THE COURT: How would any Zuffa business-related
3 email account or instant messages account not contain primarily
4 business-related materials?

5 MS. GRIGSBY: So, all Zuffa or business-related email
6 accounts, instance messaging, I mean, if it -- if it's an
7 actual Zuffa account, then we've collected it.

8 THE COURT: But that's not what your --

9 MS. GRIGSBY: Correct.

10 THE COURT: -- proposed change is. You're -- the
11 request is for business-related accounts and then you -- you
12 propose a definition of business purposes that does not seem to
13 apply to this category of deposition topic.

14 MS. GRIGSBY: So, we're not really arguing with the
15 Zuffa -- if it says all Zuffa-related accounts. I think,
16 again, it's not just business purpose. It's the term business
17 here, because the parties, I think, have a fundamental
18 disagreement as to what a business account would be.

19 So, if we're talking about --

20 THE COURT: You don't tell me about that in your
21 papers, so that's why I'm asking.

22 MS. GRIGSBY: I understand.

23 THE COURT: Because it didn't make sense to me what
24 you were fussing about in that topic.

25 MS. GRIGSBY: No, I understand. So, I think what

1 we're just talking about is the non-company accounts. If it's
2 really a Zuffa account, we would have collected it, produced
3 it, and had information about it.

4 THE COURT: One would think. Yes.

5 MS. GRIGSBY: Right. Yes, we have. So --

6 THE COURT: And what's your definition of a Zuffa
7 account, so that way don't have that dispute?

8 MS. GRIGSBY: I mean, I think anything that's at UFC
9 that Zuffa runs --

10 THE COURT: That you pay for?

11 MS. GRIGSBY: I mean, that's a little bit difficult,
12 because if there's some kind of reimbursement for a different
13 account, I would have to think about that.

14 THE COURT: That's why I'm asking, because I can
15 anticipate that this will be a topic of a future dispute.

16 If it's a Zuffa account, what does it mean to be a
17 Zuffa account? It's a company account; it's one that it
18 provides, to a certain level of company executives, employees.
19 The company pays for it. Why shouldn't you have to produce
20 that category of information?

21 MS. GRIGSBY: So, I think we would agree that if
22 it's, you know, really a company account, that we would. It's
23 just -- I think the parties need to agree and be precise about
24 the definition.

25 And I understand their concern with our definition of

1 business purpose. But, for example, I'm thinking right now of,
2 like, the UFC Twitter account or the people who run that
3 Twitter account. We don't dispute that that is a UFC account.

4 THE COURT: All right. But let me just give you, you
5 know, another example. You have a company cell phone that the
6 company provides and the company pays for.

7 MS. GRIGSBY: Uh-huh.

8 THE COURT: Are you going to contest that that is a
9 company cell phone, a Zuffa cell phone even though the
10 individual may be reimbursed for it as opposed to Zuffa pays
11 for it on its own account?

12 MS. GRIGSBY: Again, I don't think we do. I mean,
13 we've actually collected information from those types of
14 devices. So, for example, we had a bring your own device
15 policy, and we've already collected all that data. So --

16 THE COURT: I'm just trying to make sure that you are
17 not parsing --

18 MS. GRIGSBY: No.

19 THE COURT: -- in a way that is trying to hold back
20 on discovery on this category of information.

21 MS. GRIGSBY: I don't think so. I mean, Your Honor,
22 I just -- I think the point is, obviously, plaintiffs have
23 their own view, because they don't have complete transparency
24 into our process.

25 But, we've, you know, given them -- we've given them

1 text messages from peoples' private, you know, cell phones,
2 that sometimes Zuffa does pay for it. And we haven't been
3 holding back on that. And we've tried to, you know, figure out
4 whether they have personal email accounts that they are using
5 for business.

6 So, no. If Zuffa's involved in kind of giving the
7 employee access to the account or enabling the employee to
8 conduct business on that account, that's not even -- that's not
9 something right now that we're even disputing.

10 THE COURT: Well, I understand your argument talking
11 about if somebody's on Facebook saying, "Oh, I had fun at work
12 today."

13 MS. GRIGSBY: Right.

14 THE COURT: They mention work in -- on a social media
15 account doesn't mean that it should be discoverable on their
16 personal accounts.

17 MS. GRIGSBY: Right. So, I think, Your Honor, I
18 mean, obviously, that's a legitimate concern. But I think, at
19 this point, it is -- it really is hypothetical, because, you
20 know, we've tried to explain to the plaintiffs what we have
21 done and the types of information that we have searched.

22 And, you know, they have just not been satisfied with
23 the definitions we've provided. But, at the same point,
24 plaintiffs are well aware that in terms of the employees
25 bringing their own device and searching different, you know,

1 places where there could be ESI, we have done that.

2 So, for example, again, Joe Silva's text messages.
3 It's on his personal phone. I have handed them to you, and
4 we've collected them and produced them. And we are perfectly
5 willing to educate our custodian of records on the steps we've
6 taken for those and the things that were in existence when we
7 actually put in place the litigation hold and interviewed the
8 Court-ordered or the potential custodians.

9 So, for Topics 27 and -- through 29, they seek, you
10 know, identification of documents from or data that reference
11 the subject matter of the litigation that may have been deleted
12 or destroyed. Some variation of that when you go from the time
13 frame of January 1st, 2014, to the present.

14 Again, to support it in their papers, they use
15 examples of a phone that's lost. A marginally relevant text
16 message that a former employee didn't save. And just
17 truthfully, inaccurate information about Joe Silva, which is
18 that he somehow had deleted or lost text messages.

19 It's nearly impossible, unless you're -- unless there
20 was actually some intentional destruction, it's impossible to
21 figure out what you don't have or things that were actually
22 deleted, which may have been deleted pursuant to a legitimate
23 document retention policy. We don't necessarily log those
24 things.

25 And we've tried to explain to plaintiffs that is our

1 problem here, is that we don't keep records of things that were
2 deleted, especially from January 1st, 2014, to December 18th,
3 2014, that were, you know, part of this three-month -- this
4 three-month deletion policy.

5 And I think it also deserves note that they can look
6 at topics -- the answers to Topics 1 through 12, which talk
7 about our efforts after the service of the lawsuit, to
8 identify, preserve, collect and produce documents, to also get
9 very specific information. It's just we would not have
10 information if something was actually destroyed.

11 THE COURT: You don't know what you don't have.

12 MS. GRIGSBY: Right. Exactly. So, that's our
13 objection there. We just don't have the information
14 whatsoever.

15 And then just as a last point, I mean, I think
16 there's a lot in plaintiffs' statements and in their papers
17 about how Zuffa has tried to delay this process and that how we
18 are trying to withhold things from them.

19 But the time line is that plaintiffs raised the
20 custodian of records deposition to us asking for dates in April
21 of 2017. Yes, it took us three weeks to get back to them with
22 dates. But we did not receive a notice for this 30(b)(6)
23 deposition until May 18th, which included 29 topics.

24 We immediately tried to meet and confer with
25 plaintiffs given the scope of what they were asking for.

1 May 22nd, we served written objections. However, we
2 approved -- we said we would proceed with the topics I listed
3 earlier, which are 1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 14, 18, 20,
4 22, 23, and 25, each of which went to our policies, our
5 document -- other information within our control in which we,
6 Zuffa, would normally maintain and which are maintained
7 centrally, as opposed to what the individual custodians or
8 witnesses.

9 Despite our willingness to move forward on the vast
10 majority of topics, the deposition, which was originally
11 scheduled for May 26, was taken off the calendar.

12 And the other thing is, in terms of this delay, I
13 think plaintiff had stated that they put it at the end based on
14 conversations in earlier status conferences from 2015.

15 And at that time, the Court had (indiscernible) in
16 that the custodian of records deposition would potentially be
17 something short that could be done at the end after they've
18 already --

19 THE COURT: That was in the context of discussing
20 any -- the limitations and the appropriate limitations --

21 MS. GRIGSBY: Yes.

22 THE COURT: -- on discovery and making a distinction
23 between substantive depositions and 30(b)(6) custodian of
24 records depositions, which are typically done strictly to
25 authenticate.

1 MS. GRIGSBY: Yes. And just so Your Honor knows, and
2 I think we've said at various times, but in Docket No. 373,
3 we've actually stipulated to authenticate all the documents.
4 So, that's not even an issue here.

5 THE COURT: Uh-huh.

6 MS. GRIGSBY: I mean, I think the real issue is that
7 plaintiffs are curious about ESI and whether that they can
8 perhaps relitigate the motion that they brought with respect to
9 Mr. White and our ESI preservation efforts.

10 Zuffa has never maintained that it is unwilling to
11 provide them the information, much like the one we did in our
12 opposition to the motion, which is the steps we took to
13 preserve, collect, maintain ESI.

14 But this is a 29-topic deposition notice, which is in
15 addition to the 50 -- 56 topics that they've already noticed
16 for a separate 30(b)(6).

17 So, this is just coming kind of at the end of
18 discovery, where plaintiffs want just a wealth of information,
19 and it would be impossible, if not extremely time consuming and
20 burdensome, to educate a witness on everything that plaintiffs
21 wish to ask the witness about for this 30(b)(6).

22 So, for these reasons, we ask that you narrow or
23 modify their amended notice for the 30(b)(6).

24 THE COURT: Thank you.

25 And who will be arguing the plaintiffs' position?

1 Mr. Saveri?

2 MR. SAVERI: Yeah, I will. I will, Your Honor.

3 MS. GRIGSBY: Thank you.

4 MR. SAVERI: I'll start wherever you want to start,
5 Your Honor, but let me maybe do a little bit of housekeeping
6 before I do that.

7 There may be a little bit of confusion about what
8 there is an agreement to. There's a letter that's attached as
9 Exhibit 3 to Document 450, which is a June 20th letter from
10 Mr. Dell'Angelo to Ms. Lynch and the Boies Schiller firm that
11 reads:

12 ""The parties are in agreement that Zuffa shall
13 present a witness prepared to testify to Topics 1, 3,
14 5-12, 14, 16, 18, 20, and 22-26 as written. Regarding
15 Topics 2 and 4, plaintiffs agree to the limits set forth
16 in your June 19th letter."

17 As far as I know, that's the current state of the
18 agreement. I've flipped through the correspondence again to --

19 THE COURT: They are arguing about a discrete set,
20 13, 15, 17, 19, 21 and 27 through 29.

21 MR. SAVERI: Okay. So, when -- there were a couple
22 of times, I think, when -- maybe I misheard it or the way
23 Miss Grigsby recited it, what there was an agreement on.

24 I just wanted to make sure we're all -- we're all on
25 the same page. That's what I understand the agreement is. So,

1 we can -- I'm prepared to start where -- with the ones where
2 there is no agreement. Or let's be clear about --

3 THE COURT: You were very close to getting to an
4 agreement, and then because it wasn't a global agreement, Zuffa
5 said, "If we can't agree on everything, everything's up in the
6 air."

7 MR. SAVERI: Yeah, and that's -- it's still timely,
8 and that's true, and we're going to press reset. So, we --

9 THE COURT: Well, you don't get to negotiate and get
10 almost everything you want and then say you are going to take
11 to it the Judge if you don't get everything.

12 MR. SAVERI: I understand that. And, then, look.
13 I've been in lots of negotiations where people said either
14 there's a global deal or there's no deal. That's fair. That
15 happens all the time.

16 The only point of it is, is I think it is relevant to
17 look at those discussions, because it does indicate that there
18 are -- there will be some place where the parties are -- do --
19 have tried to reach an agreement and may be close to one.

20 So, Your Honor, first I want to be clear though that
21 part of what I heard from Miss Grigsby was that Zuffa generally
22 objects to the topics that are in dispute and raised an issue
23 about whether they were appropriate at all.

24 We have an agreement that at least with respect to
25 the eight that are in dispute, that at least there will be a

1 custodian produced to testify in some degree. We are having a
2 dispute about what the nature of the scope of those topics are,
3 and I want -- I want to be clear about that.

4 So, I think the first issue that came up is this
5 definition of business purposes, because that comes up in, I
6 guess, 13, 15, 17, 19, 21, but it's not part of 27 through 29.

7 I think our concern is that Zuffa's definition is --
8 and I'm quoting from the letter -- "The regular use of social
9 media or other non-Zuffa account or service by an employee to
10 carry out his or her official job duties."

11 I think our concern is that with the term "regular
12 use," that is not an objective criteria. That seems like a
13 subjective criteria and something that is not only, I think,
14 unfairly limiting, but it's going to be hard to apply and
15 perhaps may be the subject of even more litigation and parsing.

16 And I think our -- our view is we'd like to cut that
17 out and get these depositions taken. We've proposed a slightly
18 different definition of business purpose.

19 Our proposal, which, at one point, we had agreement
20 on, was a device -- and I'm quoting --

21 "A device or account is used for a 'business purpose'
22 when the employees using the device or account sends or
23 receives communication, documents, or other content, and
24 that content; 1, furthers, discusses, or is otherwise
25 pertinent to the business objectives of Zuffa; and 2, was

1 sent or received by the Zuffa employee or employees
2 involved with an intent to further discuss or address a
3 business objective of Zuffa in connection therewith."

4 And I think that that more fairly describes what a
5 communication ESI for a business purpose is.

6 And, for example, we've seen examples of -- you know,
7 I guess it was a photograph of someone posted on Facebook of a
8 shot at -- taken in a Zuffa coffee room. Our definition
9 doesn't ask for that.

10 So, I think that that -- what we've tried to do is
11 come up with a definition that is objective and workable. And
12 it actually makes sense, because it ties -- it doesn't require
13 Zuffa to try to figure out or parse what a regular business
14 purpose is, but applies some common-sense concepts, like the
15 content further discusses or is otherwise pertinent to business
16 objectives of Zuffa.

17 That's not a photograph in a coffee room of Zuffa, or
18 it was sent or received by a Zuffa employee or employees
19 involved with an intent to further discuss or address a
20 business objective of Zuffa.

21 Again, I think that's a common-sense definition. I
22 think it's consistent with the requirements of relevancy under
23 Rule 26. That's our proposal.

24 Your Honor has our -- our position on that, and
25 can -- can make the decision on that. So, that's our position

1 on -- on business purposes.

2 The second point, and we didn't -- we didn't hear
3 much about this, but we have a dispute about the time period.
4 We think that with respect to this discovery, the time period
5 that's relevant should be the same time -- relevant time period
6 for production of documents in this case.

7 THE COURT: You're talking with respect to the
8 personal devices and personal accounts as well as the business
9 devices?

10 MR. SAVERI: Yes, Your Honor.

11 THE COURT: Because with respect -- they've agreed to
12 the time period with respect to the ones that aren't in dispute
13 in this hearing.

14 MR. SAVERI: That's --

15 THE COURT: But with respect to the personal devices
16 of individuals, many of whom are no longer employed by them --

17 MR. SAVERI: Right.

18 THE COURT: -- why is the time period -- I mean, do
19 you really expect someone to know what device they had and what
20 became of it dating back to January 1st, 2005?

21 MR. SAVERI: Your Honor, to be fair, not
22 categorically, but certain -- certainly what we're just asking
23 them is within the scope of their obligations under the rule to
24 make the inquiry and to report on the results of that inquiry.

25 Now, to your point, if the inquiry was conducted and

1 the answer is, "Look, it's just too long ago. We don't know
2 the answer, because it's too long ago," that's the answer. And
3 we -- and we can't -- that's the answer. And -- and that's --
4 that's the testimony. That will be under oath, and we'll move
5 forward.

6 Candidly, Your Honor, I think there are some people
7 who actually do remember at least some of the information
8 going --

9 THE COURT: (Indiscernible) has had his flip phone
10 for 10 years and didn't replace it until he had to maybe.

11 MR. SAVERI: Well, Your Honor, I guess I don't want
12 to share too much information, but I have a file drawer in my
13 office of all my old phones that -- some of them going back
14 into the mid '90s, but that may -- but, so, let me stop there.

15 THE COURT: Okay.

16 MR. SAVERI: But I -- all we're asking is to conduct
17 the inquiry. We're not saying that you have to take
18 unreasonable steps.

19 Under 30(b)(6), they are obliged to produce a
20 designee who conducts a reasonable inquiry. If the designee
21 conducts that reasonable inquiry and doesn't -- isn't able to
22 answer the question, the -- the designee should answer
23 consistent with that.

24 But consistent with the relevant discovery in this
25 case or the relevant discovery period in this case that goes

1 back to 2005, it seems to me, Your Honor, that particularly in
2 a case where there is some significant record, that there are
3 devices or sources of ESI that are outside of the confines of
4 the Zuffa servers or the kind of traditionally ESI, that the
5 inquiry is appropriate.

6 And so that's really our position, and that's why we
7 think it's reasonable to have a single time period, which
8 includes the -- the personal devices. And that's our position.
9 That's our position.

10 The -- the other, I guess, category of dispute is a
11 dispute about the terminology. And I believe it's 13, 15, 19,
12 and 21, which -- which were -- those topics asked for the
13 witness to also be prepared to testify about the -- these are
14 the words we used -- the use, preservation, backup and status,
15 close quote, of the respective categories of ESI.

16 Again, this is a -- this is a subject where I thought
17 we were close to an agreement. But then we kind of -- we
18 backed away from it when we couldn't reach a global agreement.

19 Right now, as I understand Zuffa's position, that the
20 only information that they are, well, willing to produce is
21 information regarding the identification of those -- of those
22 categories of ESI.

23 We think that we are entitled to the more broad set
24 of -- of topics. The identification is -- is useful, but
25 doesn't answer all the relevant questions.

1 Questions regarding the -- the use, preservation,
2 backup and status of ESI is relevant for at least two purposes.
3 One will -- has to do with the admissibility of the evidence.

4 Now, we have a stipulation about authentication, but
5 we have no agreement about other foundational requirements for
6 these documents.

7 A number of these documents we believe will be
8 admissible under the business records exception to the hearsay
9 rule. In order to establish that, establishing that the -- the
10 course -- the -- the practices and the -- the way these --
11 these documents were created, used, and maintained is relevant
12 to establishing the foundation for the -- for business records
13 under the hearsay rule.

14 THE COURT: You are talking about the business record
15 exception with respect to relevant ESI that's contained on
16 personal devices that were used by various custodians for
17 business-related purposes.

18 MR. SAVERI: That's part of it. I mean, again,
19 there's a -- for each of these, there's a -- there's kind of a
20 business -- a business category of ESI, and then there's a
21 nonbusiness category of ESI which are these personal devices.

22 Now, I can imagine that when we get to trial, we will
23 have some dispute that ESI that comes from personal devices
24 whether -- or personal --

25 THE COURT: Have you had that discussion with

1 opposing counsel in the efforts to stipulate to admissibility?
2 Because it seems to me if opposing counsel has produced
3 documents from personal devices, recognizing they are
4 responsive to your document request, that should be covered
5 within the ambit of an appropriately drafted stipulation on
6 authenticity.

7 MR. SAVERI: So, my recollections of the
8 authenticity -- and we -- I don't think that -- this was
9 covered. And I don't want to get to the point, Your Honor,
10 where we get to trial, and someone says --

11 THE COURT: That part I understand. But they have
12 indicated a willingness? Because it's kind of a silly waste of
13 everybody's time to be fussing over authenticity in a case that
14 has 2 million documents that have been produced.

15 MR. SAVERI: But if -- but if we can get a
16 stipulation, and it can be confirmed today, Your Honor, that
17 documents that are produced by Zuffa, for example, that come
18 from these sources that we're talking about, from the Zuffa
19 files, their ESI, their email servers, one; and, two, that come
20 from these other sources, which they've collected pursuant to
21 the document request, are going to be admissible as business
22 records --

23 THE COURT: Okay. Authentic is one thing.
24 Admissible is another.

25 MR. SAVERI: Okay. And I wanted to be very clear

1 about that. I didn't -- and I was careful when I spoke not to
2 allied or confuse those two.

3 THE COURT: Well, that's fine. I'm asking it with
4 questions to flush it out, so --

5 MR. SAVERI: And I appreciate that, Your Honor. I
6 want to be very clear that the authentication part, which is
7 whether these are -- whether these are phony or not, is
8 something that they stipulated we don't have that problem.

9 We're talking about admissibility of these documents
10 pursuant to the business records exception of the hearsay rule.

11 THE COURT: Right. And so why don't you get the
12 admissibility under the business record exception information
13 in requests 1 through 12 of your notice?

14 MR. SAVERI: We -- we may be able to do that. And I
15 do -- I do -- I do recognize the fact that there is some -- the
16 way these are drafted, there is -- depending on how you
17 interpret those documents, those -- or the topics, there is --
18 there is the potential for overlap. No doubt about that.

19 But lawyers do these kinds of things, and it may be a
20 little bit of belts and suspenders. But to your point, Your
21 Honor, we -- regardless of what topics it's under, and we don't
22 want to have a dispute about whether this is the right person,
23 but we think -- and we think we are entitled to get the
24 information from a document custodian to address the
25 requirements of the business records exception to the hearsay

1 rule. So, that's one purpose of the --

2 THE COURT: Well, all of the custodians for whom ESI
3 has been produced plus you are asking for nine others.

4 MR. SAVERI: Yes. Yes, but they are also -- I mean,
5 just to be precise, I think there were also custodians that
6 were kind of centralized file custodians that might have been
7 kept on a server or in some centralized file location that
8 aren't attributed to a specific --

9 THE COURT: An individual. Just the company.

10 MR. SAVERI: Right. I mean, back in the old days,
11 they would be corporate files that might be sitting in the
12 middle of the office as opposed to in someone's personal
13 office.

14 But, nonetheless, we -- to -- I think it was
15 reasonable to include those, and they might not be a document
16 custodian technically.

17 So, but in addition, Your Honor, I think that we are
18 entitled, under Rule 26, to obtain the information regarding
19 the use, storage, location, preservation, backup, condition of
20 status of the ESI to determine whether there has been -- the
21 extent to which there has been destruction of documents despite
22 the existence of a litigation hold. That -- there has been
23 some evidence in this record of that. And --

24 THE COURT: Except that you asked for a time period
25 that's 10 years prior to the litigation hold. The topics

1 covered January 1st, 2005. That's one of their objections.

2 Their proposed limitation is from the date the
3 litigation hold was in place through June 2015, which is the
4 date of the first response of your first document request.

5 MR. SAVERI: Fair -- fair enough, Your Honor. But I
6 do think that in the first instance, because it makes sense to
7 ask that question, to see whether there were documents that
8 predated the application of the litigation hold that were
9 destroyed or not maintained, I don't know the answer to that
10 question.

11 I think we're entitled to -- to know that under Rule
12 26. I think there will be questions in the case and part of
13 the answer will --

14 THE COURT: Even though there's no duty to preserve
15 that predates reasonably anticipated litigation.

16 MR. SAVERI: Well, Your Honor, I think we're entitled
17 to know the facts regardless of whether -- of what we -- we do
18 with those facts.

19 Now, I agree that the argument of the relevancy of
20 those -- of that information is -- put it the other way.
21 Evidence regarding the time period affected by the litigation
22 hold is -- is clearly much more germane.

23 We just -- we thought that when we were proposing
24 the -- a time period, a time period consistent with the
25 relevant time period for -- of discovery makes sense. It's

1 reasonable, it's objective, and it's worked throughout the
2 case. And so, that's our -- that's our position, Your Honor.
3 I don't -- I don't think there's more gloss to put on it. I
4 think -- so, that really addresses the topics, up to the last
5 three, which are 27, 28 and 29.

6 Now, again, so 27, 28 and 29 have to do with the
7 maintenance or destruction of documents during three discrete
8 time periods. We broke it up because there are key time
9 periods in the case; the first being January 1, 2014, to
10 December 14, 2014; the second December 14, 2014, to
11 December 18, 2014; and the third December 18, 2014, and
12 afterwards.

13 And the -- the text of the topics is the same. So,
14 whatever you rule will apply to all three. So, the dispute
15 here is that Zuffa wants to, in response to the -- to limit
16 those topics to, as I understand it, an identification of the
17 document retention or destruction policy and a description of
18 those as well as known exceptions to those policies.

19 Now, I think our problem with that is we don't think
20 that's specific enough. We've asked for more --

21 THE COURT: How are they supposed to know what's no
22 longer on personal devices?

23 MR. SAVERI: Well --

24 THE COURT: I mean, it's just a practical problem.
25 How are they supposed to inquire and find out, "Oh, yeah. I

1 remember that on December 14, 2014, I deleted an email from my
2 mom, and" --

3 MR. SAVERI: So --

4 THE COURT: How would they possibly know that
5 information?

6 MR. SAVERI: Well, you know, I think -- I think there
7 is a difference and a wide gap between merely an identification
8 of the policy and -- and the description, which they have
9 agreed to provide, and your, I think, reasonable example, which
10 is people delete emails all the time. Some have to do --

11 THE COURT: Especially back in the old days when we
12 didn't have cloud storage and when there was limitation on what
13 you could store. And people -- you know, Mr. Silva himself
14 testified, you know, "This is my to do list. I -- I deleted
15 things when I took care of them, and that's how I knew I was up
16 to date."

17 MR. SAVERI: Well, but, Your Honor, if -- if the
18 answer to the question is -- and you -- but I think there's a
19 reasonable common-sense way that this goes.

20 There is a custodian, and the lawyer or who's ever
21 preparing for this deposition goes to the custodian and says,
22 "During these -- one of these three periods, did you
23 destroy" -- or flip it the other way. "Did you maintain all
24 your email?"

25 Let's say ask somebody, or destroy or -- and the

1 answer will be "Yes" or "No," and -- and there can be
2 reasonable --

3 THE COURT: It's, "No," or "I have no idea. I don't
4 remember."

5 MR. SAVERI: Well, and if they don't -- if they don't
6 remember, they don't remember. But I think that by the same
7 token, if the answer is, "I -- I recall that there were emails
8 that had to do with" -- we can come up with specific example --
9 "that, in fact, I destroyed," or "As a -- as a categorical
10 matter, I emptied my delete email box. I had it set to delete
11 it every 90 days or something like that."

12 Those are -- those are the kinds of reasonable
13 answers that I think we entitled to. And it seems to me that
14 that's -- that's a -- we're just talking about reasonable steps
15 here.

16 And it would seem to me that's part of the reasonable
17 inquiry. We certainly do not want to have Zuffa go back to
18 every custodian and say, you know, "On March 1, 2010, do you
19 recall if you deleted emails?" Okay. You know, the next day,
20 "Do you recall deleting any emails?" The next day, "Do you
21 recall" -- that -- that -- we're not asking for that, and I
22 don't think it would be reasonable to do so.

23 But we -- if the custodians have any specific
24 recollection of the deletion of documents or data that relate
25 or reference the subject matter of this litigation, that has

1 been deleted, physically destroyed, discarded, damaged,
2 physically or logically, or overwritten, and it goes on, I
3 think we are entitled to the answer to that question.

4 And there's -- and I want to be clear. Individual
5 witnesses, individual custodians, individual users may not
6 always know about this, because some of this stuff that we're
7 talking about may happen at the system level or at the
8 administrator level.

9 And, so, part of the inquiry is not only to
10 individual custodians, but to -- excuse me, Your Honor --

11 THE COURT: But again, why isn't that covered in
12 topics 1 through 12?

13 MR. SAVERI: It -- I think, Your Honor, if it is, and
14 it's clear that we're getting that information, I think we're
15 fine. Because we -- we want --

16 THE COURT: But their comment is to me that we -- you
17 know, to make us go back to 22 separate custodians, plus the
18 additional nine that you want, and ask every single one of them
19 these specialized questions, for a period dating back to
20 January 1, 2005, is simply unreasonable and overly burdensome
21 given that we've agreed to provide a 30(b)(6) to address all of
22 the non-disputed topics.

23 MR. SAVERI: As long as -- well, Your Honor, as
24 long -- if the -- if the inquiry includes an inquiry to
25 custodians, "Do you -- did you ever destroy any email during

1 the period?" and we're getting that answer one way or the
2 other, I'm -- we're fine with it, Your Honor. And that's all
3 we -- that's all we need. I think it's a reasonable inquiry,
4 and it's reasonable under the rules to --

5 THE COURT: Why isn't that a better inquiry posited
6 to the individual deponents that you're most interested in as
7 opposed to a 30(b)(6) witness who has to contact that
8 custodian, try to translate what it is that you want, try to do
9 the best to get an answer, and provide the corporation's answer
10 to the question as opposed to the individual's best
11 recollection?

12 MR. SAVERI: Because -- I say that the 30(b)(6) is
13 actually a better way to do it, Your Honor, because I think --

14 THE COURT: A 30(b)(6) is far superior for lots of
15 things, but I'm questioning whether it's the best discovery
16 mechanism for what you're seeking; the level of detail that
17 you're seeking.

18 MR. SAVERI: And I -- I hear you, you know, but let
19 me push back and try to answer your question.

20 I think that a 30(b)(1) deposition of a lay person to
21 whether he destroyed or maintained documents is a -- is a
22 legitimate question. And a witness may or may not know the
23 answer.

24 I mean, you know, Mr. Silva's testimony is a pretty
25 good example of it. You know, he said, "I don't -- I don't

1 know." Maybe some witnesses -- sometimes witnesses do --

2 THE COURT: He said "I had no idea," posited the
3 question, "Do you have any explanation for why there aren't
4 documents between this discreet period of time and that
5 discreet period of time," which is less than a month's period
6 of time.

7 And opposing counsel was telling me you were even
8 wrong about that, because they did produce documents. And, of
9 course, he's not going to remember specific --

10 MR. SAVERI: I -- excuse me, Your Honor.

11 THE COURT: Go ahead.

12 MR. SAVERI: I agree that it's -- and this is my
13 point. I think that that -- that kind of inquiry to an
14 individual witness about document retention issues is -- is one
15 more often than not you're going to get an imprecise answer.
16 You are going to get an uninformed --

17 THE COURT: Right. But what you are asking them to
18 do is to go to each of those custodians, ask them those
19 questions, to get the imprecise answers, and then educate a
20 30(b)(6) to provide them to you.

21 MR. SAVERI: But -- but, Your Honor, I think that the
22 difference is, is that as the Court -- 30(b)(6) obligates the
23 corporate designee to do an inquiry and to synthesize and bring
24 together and be prepared to answer that question in an
25 efficient way.

1 And it would include the custodians, but it would
2 also be other information, which may be at the administrator
3 level. And my view is that -- and I think this was the insight
4 under Rule 30(B)(6), is that in certain issues, particularly if
5 you have a corporation, where it's not an individual, but it's
6 a -- it's a group of individuals, there is a -- a mechanism for
7 getting the knowledge of the corporation.

8 And that requires the corporate entity to synthesize
9 and pull together from a variety of sources the information to
10 answer the question. And that's the insight of the drafters, I
11 believe, in drafting Rule 30(B)(6). And we're trying to take
12 advantage of that.

13 So, we think it's more -- you asked me whether it's
14 better to go to each individual witness and ask them those
15 individual questions. My position is that it's more efficient
16 to go to the -- use 30(b)(6) to get the corporation to do the
17 reasonable inquiry, collect that and produce the designee.
18 That's our position, and that's -- that's what -- that's why
19 we're trying to take advantage of the rule.

20 I just -- so, I think we've talked about the main
21 kind of overarching kind of definitional issues that have to do
22 with the topics. So I think we've covered the business
23 records. We talked about 13 through 19 and 21. And then we
24 talked about 27 through 29.

25 So, I think I -- I think I've covered the landscape.

1 If you have other questions, Your Honor, I'm here and happy to
2 answer them.

3 THE COURT: I'm not shy to ask, and I've been asking
4 as we've gone along. So, all right.

5 MR. SAVERI: All right. So, with that, I'm done.
6 Thank you.

7 THE COURT: So, Miss Grigsby, let me just go to the
8 one issue that seems to be a potential sticking point, because
9 you raised this in your papers that you agreed to stipulate to
10 authenticity of the records you produced in response to the
11 plaintiffs' document request.

12 His concern is whether with respect to individual
13 devices, the -- you will object on -- that the documents are
14 not business records for purposes of the rule.

15 Now, you may have other objections to the
16 admissibility of documents, but would you agree that if you
17 produce them in discovery, that they're Zuffa's business
18 records for purposes of the business records exception to the
19 hearsay rule?

20 MS. GRIGSBY: Well, Your Honor, this is actually the
21 first time that plaintiffs have raised this, so I haven't -- we
22 haven't even considered that --

23 THE COURT: And that's fine. That's a fair response.
24 I'm just -- I understand that argument.

25 MS. GRIGSBY: Yes.

1 THE COURT: Because if you've collected the
2 devices --

3 MS. GRIGSBY: Right.

4 THE COURT: If you've culled them for relevant and
5 discoverable information, and if you've produced them on the
6 theory that it contains either relevant or discoverable
7 information, then it would not seem appropriate to say, because
8 they were personal devices, they are not Zuffa's business
9 records.

10 MS. GRIGSBY: So, Your Honor, I think that, you know,
11 for 99 percent, I -- we'd probably be willing to stipulate.
12 It's just that I -- you know, again, we haven't really thought
13 about it, because plaintiffs haven't raised that --

14 THE COURT: That's a completely fair answer, but that
15 is something that I do appreciate that argument. You can't
16 produce them on the one hand, as relevant and discoverable, and
17 then claim that they are not business records.

18 You may have other objections to the documents, that
19 is that they are --but with respect to the business record
20 exception, that's what one of their concerns is. And I
21 understand that concern, and it's a legitimate concern.

22 MR. SAVERI: Your Honor, if I may. If the issue is
23 that we -- it hasn't been joined or there's some surprise, I
24 mean, candidly, I think it's -- it should be clear from the
25 face of the -- of the --

1 THE COURT: It wasn't at all clear to me until you
2 raised it.

3 MR. SAVERI: That is -- that is my fault, Your Honor.
4 But I -- I just -- my position is I don't want to be
5 foreclosed, while discovery is still open, from conducting the
6 inquiry I need and developing the evidence to get these
7 documents in at trial. And discovery is still open, and
8 we're --

9 THE COURT: I understand. But, again, she's hearing
10 it for the first time. I didn't clearly recognize the issue
11 until you raised it and questioned you about what your concern
12 was. So, I'm not going to sandbag her and make her decide on
13 the fly without even talking to her co-counsel and the client.

14 MR. SAVERI: And I don't want any -- anybody to be
15 sandbagged either. And if we have to have more discussion and
16 if we have a dispute to come back here and have some
17 briefing --

18 THE COURT: That's fine. I'm happy to -- to do that.
19 But that does seem to be a legitimate concern that you have. I
20 absolutely appreciate that.

21 And I would not expect opposing counsel to play games
22 at saying we produced it, because we thought it was
23 discoverable, but now they are not our business records.

24 But, on the other hand, there may be a category of
25 documents, there may be some examples of which they wouldn't be

1 willing to stipulate across the board. And that's something
2 that you need to flush out with having meaningful discussions
3 among yourselves.

4 MR. SAVERI: Absolutely, Your Honor. And if there
5 are exceptions to a general rule, I mean, let's -- let's hash
6 that out, and everybody should have the opportunity to their
7 evidence on that. And that's all I'm really asking for.

8 THE COURT: That's fine. All right.

9 MS. GRIGSBY: Your Honor, just to add one thing.

10 In their request for admission, they had hundreds of
11 request for admission where they basically tried to lay the
12 foundation for authenticity and business records. So, again, I
13 mean, I'm just saying I would probably have to investigate,
14 and, you know, just in terms of --

15 THE COURT: I am allowing you that. I'm not making
16 any ruling on it. I'm just --

17 MS. GRIGSBY: Uh-huh.

18 THE COURT: -- telling you I expect you to discuss
19 that, and I appreciate that -- I don't want to burden any trial
20 judge with having days' worth of pretrial hearings on whether
21 documents qualify under the business records exception.

22 That's, you know, part of my job is to make it easy
23 on the -- easier on the trial judge to try to case. So, we'll
24 reserve that for you to discuss and bring to a conclusion on
25 another day.

1 MR. SAVERI: Thank you, Your Honor.

2 THE COURT: So, here is -- I've reviewed your moving
3 and responsive papers, and the attachments and the proposals,
4 and the various versions, and my ruling with respect to the
5 eight disputes in -- or eight topics in dispute is that I will
6 grant Zuffa's request to modify the eight topics in accordance
7 with Exhibit 9 to the July 7th, 2017, dispute resolution
8 conference, which is the clean copy, basically, of what Zuffa
9 proposes, with the two exceptions.

10 One is that the Court will adopt the definition of
11 business purpose that Zuffa initially agreed to before changing
12 its position, when there was not a global resolution, as
13 articulated in the July 4th, 2007, letter that's attached to
14 the -- as an exhibit to the parties' dispute resolution
15 conference.

16 That's the area you thought you had agreement, but
17 then you didn't. And the -- and that definition applies with
18 respect to Topics 13, 15, 17, 19 and 21.

19 And the second exception to Zuffa's Exhibit 9, which
20 articulates how the Court is going to modify the topics in
21 dispute, is with respect to Topic number 13.

22 Zuffa's 30(b)(6) designate will be required to
23 provide testimony on the subject matter for the 22 agreed-upon
24 or Court-ordered custodians and the two additional current
25 employees, Denitza, D-E-N-I-T-Z-A, Batchvarova.

1 B-A-T-C-H-V-A-R-O-V-A, and Shane Karpal, but not the remaining
2 seven of the nine the plaintiffs propose.

3 So, Zuffa's basically prevailing with respect to the
4 eight topics in dispute as is articulated, the narrowed
5 requests on Exhibit 9 to Docket No. 450, with the two
6 exceptions I just mentioned.

7 Any questions?

8 MR. SAVERI: No, Your Honor.

9 THE COURT: Okay. You got it?

10 All right. I didn't want to have any requests for
11 clarification. I just want to make sure we're -- all right.

12 That leaves us with -- and I understand that
13 plaintiffs' opposition -- excuse me -- Zuffa's opposition to
14 the motion with respect to the attorney-client privilege is not
15 due until tomorrow.

16 I understand plaintiffs are most eager to get a
17 ruling, and an emergency procedure in place to rule on it,
18 because of the number of documents that have been withheld on
19 Zuffa's initial privilege log, which was 30,000. And you have
20 a rounded off roughly 18,000 documents that you are most
21 interested in resolving.

22 And Miss Grigsby, first from you, you have a one
23 liner in the parties' joint status report that says you've
24 produced some additional documents that you no longer claim
25 privilege with respect to, and you think that the motion is

1 moot.

2 So, bring me up to date with what you've done and why
3 you think it's mute -- moot. Just briefly.

4 MS. GRIGSBY: Sure, Your Honor. So, just to -- you
5 know, background, and you're probably aware from plaintiffs'
6 filing, plaintiffs raised the issues with -- or some issues
7 with Zuffa's privilege log in April of 2017.

8 THE COURT: Well, you didn't produce it until
9 April 7th, and then you did an amended one on April 24th. So,
10 that's pretty much the earliest they could have raised it.

11 MS. GRIGSBY: All right. No, no, no. There is no
12 dispute as to whether their -- you know, their issues were
13 timely or not.

14 But the point is, they raised issues in April of
15 2017. We basically did one revision of the privilege log,
16 which we produced to them in April 27th, the end of April in
17 2017.

18 Since that time, we actually met and conferred with
19 plaintiffs in person on June 20th of 2017, at which time we
20 told them that we were re-reviewing approximately half of the
21 30,000 entries and documents on the privilege log.

22 And we were doing it in accordance with their request
23 to look at fighter negotiations, acquisitions, and some other
24 discrete issues. So, we did do that, and we were in the
25 process of doing that in June of 2017 when we had the meet and

1 confer.

2 At that point, you will see in our papers, plaintiffs
3 basically said -- plaintiffs' counsel said we couldn't really
4 ask for more. Since that time, we've produced roughly 10,000
5 documents.

6 To be clear, Zuffa does believe it had a colorable
7 claim of privilege. But after this Court's privilege rulings,
8 and based on various negotiations in the parties where there
9 was a close call, especially with respect to the custodian from
10 the legal department and the legal department itself that was a
11 custodian, we have tried to err on the side of disclosure in
12 order to avoid protracted litigation, costly, time-consuming.

13 It's taken hundreds of hours. And when plaintiffs
14 filed this motion, we believed they were aware that we were
15 already in the middle of this effort. So, that is reason --

16 THE COURT: Well, time is ticking, because today's
17 July 13th, and you just have less than three weeks left in
18 discovery with the exception of Mr. White's deposition.

19 So, let me ask you this. The plaintiffs' motion
20 cites, with respect to four depositions of your employees that
21 are set between July 14th and August 9th and 10th, that they --
22 they identify the number of documents belonging to those
23 individuals or referencing those individuals in the privileged
24 document log.

25 Are those -- were those numbers accurate before you

1 made your supplemental production and no longer claim
2 privilege?

3 MS. GRIGSBY: Before we made our supplemental
4 production. But again, just to be clear, we started producing,
5 on a rolling basis, starting in April -- April 26th, 2017. The
6 largest part of our production occurred on July 7th and
7 July 10th.

8 But we did that -- we prioritized reviewing the
9 deponents' custodial -- the deponents' entries in the order
10 that they were to be deposed. So, we tried to do it so that
11 they would have adequate time.

12 They mentioned, again, in their motion, that we're
13 doing it on a rolling basis, but we are actually trying to get
14 it out the door so that they would have as much time as
15 possible.

16 THE COURT: Their complaint was that you were doing
17 it in dribs and drabs. And you told me that your largest
18 production was July 7th and July 10th.

19 So, for example, with respect to Mr. White, they say
20 that there were 499 documents that were listed on the
21 privileged document log. Are there still 499 documents for
22 Mr. White or do you know what's left?

23 MS. GRIGSBY: I -- I am not sure. I've seen the
24 revised log, but I -- I don't remember just in the -- like what
25 I've looked at the privilege log, his number's changing

1 substantially. The ones that really changed were Michael
2 Mersch and perhaps Lawrence Epstein, because they were both
3 attorneys, so they had --

4 THE COURT: Okay. That makes sense based on the
5 orders that you've received in my written view of what's
6 privileged and what's not.

7 MS. GRIGSBY: Right. So, it's our view that
8 generally, if the president -- if Dana White was requesting
9 deal advice, it was probably more clear-cut than perhaps, you
10 know --

11 THE COURT: All right. And so here's what I'm going
12 to do.

13 I am going to require you to produce 25 percent of
14 the privileged documents, that is the documents still for which
15 you maintain privilege as to Dana White, to the Court for in
16 camera review, with a cover sheet. Serve opposing counsel with
17 the cover sheet.

18 So -- and I expect it to be a -- every fourth
19 document. So, no games on which ones you get to pick. You
20 don't get to cherry pick. You know, these are the ones we
21 really, really think are privileged.

22 You give me every fourth document to amount to
23 25 percent of the documents you are still withholding from Dana
24 White that are privileged and will give me a pretty good idea
25 of your approach to privileged document logs.

1 MS. GRIGSBY: Yes, Your Honor.

2 THE COURT: Okay. Is there any reason why you can't
3 give me that, since the document numbers have been culled, by
4 Monday at noon?

5 MS. GRIGSBY: Monday at noon. Today is Thursday. I
6 think we should be able to do it. I'm just curious in terms of
7 our document vendor. It usually takes them 24 hours to ready a
8 production, but --

9 THE COURT: Best good faith effort. And so you give
10 those and serve them with the list by some means that makes
11 both sides able to identify.

12 Give me a spreadsheet that contains the
13 identification of the document by docket number or document
14 number in your privilege log that correlates with the column
15 for me to check privilege, not privilege, or redactions.

16 Okay? So that as I go through, I can decide as we
17 go. And that, again, will give me a pretty good roadmap on how
18 well-taken your privilege objections are.

19 MS. GRIGSBY: Yes, Your Honor.

20 THE COURT: Okay. Yes, Mr. Saveri.

21 MR. SAVERI: Thank you, Your Honor. A couple -- just
22 a couple points I want to raise. With respect -- the procedure
23 I think that you described is -- makes sense. I think that we
24 should -- we should see the spreadsheet. We don't need to see
25 the documents. The spreadsheet is --

1 THE COURT: That's what I just told her. I want to
2 serve you with the -- the listing of the documents that have
3 been provided to me, so that you can make sure she followed my
4 instructions, which is to give me every fourth document and not
5 cherry pick.

6 And so you'll know which documents I'm reviewing.
7 And by reviewing a quarter of the withheld documents, again, I
8 should have a very good idea of how well taken their privilege
9 objections are.

10 MR. SAVERI: We also, though -- we don't know how
11 many of the -- the documents that we cited in our report for
12 White or the other custodians have now fallen off the list.

13 I -- I would suspect that most of the ones that are
14 falling off and have been produced and -- would have to do
15 with -- with Mersch and Epstein, because --

16 THE COURT: That's what she just told me.

17 MR. SAVERI: -- we, though, have Mr. Mersch's
18 deposition tomorrow.

19 THE COURT: I understand that. And there's no way I
20 can resolve this for you between tomorrow.

21 There are lots of arrows in my quiver. If they
22 wrongfully withheld privileged documents, and you had to go
23 forward with the deposition, being inadequately prepared, and
24 there are some great documents in there that they should have
25 produced and they didn't, there are any number of devices that

1 I have available to me to address that.

2 MR. SAVERI: I -- that's correct, Your Honor. And I
3 appreciate that. If -- I guess what I'm -- was going to say is
4 that in a -- I think that the -- in addition to the review of
5 White's, I do think there is a -- potentially a substantial
6 issue with respect to Mersch and Epstein. Because this --

7 THE COURT: There very well may be. What -- I'm
8 giving you what I can do. You're one of 700 cases that I have.

9 And I know Dana White is set for deposition on
10 August 9th and 10th, and I have a reasonable prayer of being
11 able to get through 25 percent of his privileged document log
12 in time for you to get whatever you are going to get in
13 addition to what they've given you for that deposition.

14 I don't have a reasonable prayer of going through the
15 rest. So, I'm going to do what I can do, and then we'll
16 address the merits of the rest.

17 MR. SAVERI: Okay. Very well. Very well. Thank
18 you, Your Honor.

19 THE COURT: All right. I mean, that's my intention.
20 I was just --

21 MR. SAVERI: There's a lot of documents -- I'm just
22 trying to come up with a practical way of doing it consistent
23 with the demands on your time and counsel's, so I appreciate
24 that you are.

25 THE COURT: Well, we'll start with the Dana White.

1 And he has a discrete number of documents that have been
2 withheld. And if I look at 25 percent of them, and I have a
3 chance of doing that before he's deposed, and then we'll take
4 up the rest. Okay?

5 MR. SAVERI: That -- very well, Your Honor. Thank
6 you.

7 THE COURT: All right. Thank you, counsel.
8 Yes, Miss Grigsby.

9 MS. GRIGSBY: Just one more question. Do you want
10 hard copies? Do you want it printed out or do you --

11 THE COURT: Whatever's -- you're welcome to -- as
12 long as they are legible or readable, you are welcome to email
13 them to my chambers instead of hard copies, as long as they are
14 not 2,000 pages.

15 MS. GRIGSBY: Thank you, Your Honor. Mostly emails.
16 He doesn't really like to write that much.

17 THE COURT: Whatever is the most efficient is fine
18 with me. It's hard to read a whole lot online. But, you know,
19 I'm imagining that most of these are email chains and
20 individual documents and the like, which is fine.

21 Thank you. Just comply with the local rule regarding
22 in camera submissions. There's a specific rule that tells you
23 the specifics of what you are supposed to do.

24 MR. SAVERI: Thank you, Your Honor.

25 THE COURT: Thank you.

1 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

2 THE COURT: Go forth and prosper.

3 (Recess, 3:02 p.m.)

4 --oOo--

5 TRANSCRIBER'S CERTIFICATE

6 I, KATHERINE EISMANN, court-approved transcriber, certify
7 that the foregoing is a correct transcript from the official
8 electronic sound recording of the proceedings in the
9 above-entitled matter.

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12 Date: .

13 /s/ **Katherine Eismann**

14 Katherine Eismann

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